

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

MELISSA BUCK; CHAD BUCK;
and SHAMBER FLORE;
ST. VINCENT CATHOLIC
CHARITIES,

Plaintiffs,

v.

ROBERT GORDON, in his official
capacity as the Director of the
Michigan Department of Health
and Human Services; HERMAN
MCCALL, in his official capacity
as the Executive Director of the
Michigan Children's Services
Agency; DANA NESSEL, in her
official capacity as Michigan
Attorney General; ALEX AZAR, in
his official capacity as Secretary of
Health and Human Services;
UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES,

Defendants.

No. 1:19-cv-00286

HON. ROBERT J. JONKER

Oral Argument Requested

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65(a) and W.D. Mich. L. Civ. R. 7.2, Plaintiffs move this Court for a preliminary injunction. In support of that motion, Plaintiffs state:

1. Plaintiffs have demonstrated a likelihood of success on the merits of their claims under the Free Exercise Clause, Free Speech Clause, and the Religious Freedom Restoration Act, 42 U.S.C. 2000bb.

2. Absent injunctive relief, Plaintiffs will suffer irreparable harm in the form of deprivation of constitutional and statutory rights, the loss of contracts and licenses which allow them to engage in the religious exercise of serving children in Michigan's child welfare system, loss of the ability to care for additional foster and adoptive children, the loss of critical support that foster families rely on, and potential closure of the agency's foster and adoption programs.

3. The injunction is in the public interest. Michigan has a chronic need for more foster and adoptive homes and has recognized that its interests are best served by having a diversity of child-placing agencies able to serve children. It is in the public interest to serve children in the child welfare system and to continue a status quo that has existed for many years.

4. The balance of the equities favors Plaintiffs. Plaintiffs provide crucial services to children and families, and the loss of those services would strain an already overstressed child welfare system. Michigan has not previously taken adverse action against Plaintiffs in its many years of contracting with St. Vincent, so cannot claim to be harmed by maintaining the status quo.

5. Pursuant to Local Civil Rule 7(d), Plaintiffs contacted the named defendants via email seeking concurrence. Oral argument is requested on this motion because of the complex legal issues involved in this case.

Therefore, Plaintiffs respectfully request that the Court enter an order:

1. Enjoining Defendants Gordon, McCall, and Nessel, their agents, employees, and those acting in concert with them not to terminate or suspend performance of their contracts with St. Vincent Catholic Charities, decline to renew those contracts, nor take any other adverse action against St. Vincent Catholic Charities for engaging in protected speech and religious exercise, including continuing to refer couples to other agencies when St. Vincent cannot assist those couples due to its religious beliefs.

2. Enjoining Defendant Azar from taking any enforcement action under 45 CFR 75.300(c) based upon St. Vincent's protected speech and religious exercise or upon Michigan's actions to accommodate such protected speech and religious exercise.

Dated: April 16, 2019

Respectfully submitted,

/s/ Lori Windham

Lori Windham

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Counsel for Plaintiffs

**Admission pending*

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2019, I electronically filed the above document(s) with the Clerk of the Court using the ECF System. I also certify that I sent true and correct copies of the forgoing motion and related documents by overnight commercial carrier to be retrieved by the carrier on April 17, 2019 to the following:

Mr. Robert Gordon
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Mr. Alex M. Azar II
Secretary
(separate copies sent to Defendant Azar and Defendant
Department itself)
U.S. Department of Health and Human Services

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/s/ Lori Windham

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